

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING
COMMISSION

Plaintiff,

v.

ARCHEGOS CAPITAL MANAGEMENT,
LP and PATRICK HALLIGAN,

Defendants.

No. 22-cv-3401-JPO

**MOTION OF SECURITIES AND EXCHANGE COMMISSION
FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON
DEFENDANTS' MOTIONS TO DISMISS THE COMMODITY
FUTURES TRADING COMMISSION'S AMENDED COMPLAINT**

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The Securities and Exchange Commission (“SEC”) respectfully requests leave to file the accompanying amicus curiae brief on the defendants’ motions to dismiss the amended complaint filed by the Commodity Futures Trading Commission (“CFTC”).

The SEC, the agency responsible for administering and enforcing the federal securities laws by regulating securities as well as securities markets and their participants, seeks to file the amicus brief to address important issues regarding its regulatory authority. Under the framework for over-the-counter derivative instruments established by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010), the CFTC regulates “swaps,” the SEC regulates “security-based swaps,” and the two agencies jointly regulate “mixed swaps” (collectively, “Title VII instruments”). The SEC therefore has a substantial interest in the proper classification of the Title VII instruments at issue in this CFTC enforcement action.

The CFTC alleges regulatory jurisdiction here based on the trading of Title VII instruments. In moving to dismiss the CFTC’s claims, the defendants argue that the CFTC lacks jurisdiction because the instruments at issue are subject to SEC, not CFTC, regulation. Whether Title VII instruments are subject to CFTC regulation, SEC regulation, or both depends on whether they are classified as

“swaps,” “security-based swaps,” or “mixed swaps.” The amicus brief addresses the classification of the Title VII instruments at issue in this action.

Counsel for the SEC notified counsel for the CFTC (April 4, 2023) and counsel for the defendants (April 5, 2023) that the SEC planned to file this motion.

For the foregoing reasons, the SEC respectfully requests that the Court grant this motion and accept the accompanying amicus curiae brief for filing.

Respectfully submitted,

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/s/ Ezekiel L. Hill
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April 14, 2023

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2023, I electronically filed the foregoing via the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Ezekiel L. Hill

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